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Superior Court of California,  
County of Alameda

**03/04/2024 at 03:20:03 PM**

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **IN AND FOR THE COUNTY OF ALAMEDA**

17 ENVIRONMENTAL HEALTH ADVOCATES,  
18 INC.,

19 Plaintiff,

20 v.

21 WHOLE FOODS MARKET CALIFORNIA,  
22 INC., a California corporation; and DOES 1  
23 through 100, inclusive,

24 Defendants.

Case No.: **24CV066356**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**I.**  
**INTRODUCTION**

1  
2           1.       This Complaint is a representative action brought by Environmental Health Advocates,  
3 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff  
4 seeks to remedy Defendant's failure to inform the People of exposure to lead, a known carcinogen and  
5 developmental/reproductive toxin. Defendant exposes consumers to lead by manufacturing, importing,  
6 selling, and/or distributing protein bites including, but not limited to, 365 Whole Foods Market Protein  
7 Bites - Coconut & Macadamia (“Products”). Defendant knows and intends that customers will ingest  
8 Products containing lead.

9           2.       Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California  
10 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing  
11 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
12 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
13 individual. . . .” (Health & Safety Code, § 25249.6.)

14           3.       California identified and listed lead as a chemical known to cause cancer as early as  
15 October 1, 1992, and as a chemical known to cause developmental/reproductive toxicity on February  
16 27, 1987.

17           4.       Defendant failed to sufficiently warn consumers and individuals in California about  
18 potential exposure to lead in connection with Defendant's manufacture, import, sale, or distribution of  
19 Products. This is a violation of Proposition 65.

20           5.       Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in  
21 California before exposing them to lead in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff  
22 also seeks civil penalties against Defendant for violations of Proposition 65 along with attorney’s fees  
23 and costs. (Health & Safety Code, § 25249.7(b).)

**II.**  
**PARTIES**

24  
25           6.       Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a  
26 corporation in the State of California dedicated to protecting the health of California citizens through  
27 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public  
28 interest pursuant to Health and Safety Code, section 25249.7.



1 **IV.**  
2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 – Against all Defendants)**

5 13. Plaintiff incorporates by reference each and every allegation contained above.

6 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that  
7 cause cancer, birth defects, and other reproductive harm.

8 15. Defendant manufactured, imported, sold, and/or distributed Products containing lead in  
9 violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such  
10 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the  
11 future.

12 16. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to  
13 provide a clear and reasonable warning to consumers and individuals in California who may be exposed  
14 to lead through reasonably foreseeable use of the Products.

15 17. Products expose individuals to lead through direct ingestion. This exposure is a natural  
16 and foreseeable consequence of Defendant placing Products into the stream of commerce. As such,  
17 Defendant intends that consumers will ingest Products, exposing them to lead.

18 18. Defendant knew or should have known that the Products contained lead and exposed  
19 individuals to lead in the ways provided above. The Notice informed Defendant of the presence of lead  
20 in the Products. Likewise, media coverage concerning lead and related chemicals in consumer products  
21 provided constructive notice to Defendant.

22 19. Defendant's actions in this regard were deliberate and not accidental.

23 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
24 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff  
25 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
26 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in  
27 California of the health hazards associated with exposures to lead contained in the Products.

28 21. The appropriate public enforcement agencies provided with the Notice failed to  
commence and diligently prosecute a cause of action against Defendant.

